IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. CR-18-02617

DIRECTOR OF PUBLIC PROSECUTIONS

v

CHAD LOFT

JUDGE:	HIS HONOUR JUDGE WRAIGHT
WHERE HELD:	Melbourne
DATE OF HEARING:	9 July 2019
DATE OF SENTENCE:	15 July 2019
CASE MAY BE CITED AS:	DPP v Loft
MEDIUM NEUTRAL CITATION:	[2019] VCC 1082

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Plea of guilty – one charge of armed robbery – one charge of aggravated carjacking – one charge of obtaining financial advantage by deception – one charge of attempted armed robbery – one charge of theft – one charge of resisting an emergency worker – significant prior criminal record – armed with a large hunting knife – armed robbery of a service station – very serious example of aggravated carjacking – recurring bouts of psychosis induced by drug use – no special reason exists s 10AD applied to aggravated carjacking.
Legislation Cited:	*Crimes Act* 1958, *Road Safety Act* 1986, *Bail Act* 1977, *Summary Offences Act* 1966, *Sentencing Act* 1991.
Cases Cited:	
Sentence:	Total effective sentence of 7 years and 3 months imprisonment. Eligible for parole after serving 4 years and 6 months imprisonment.

APPEARANCES:	Counsel	Solicitors
For the DPP	Ms A Birkin	Office of Public Prosecutions

For the Accused	Ms J Willard	Adrian Paull Criminal Lawyers

HIS HONOUR:

Introduction

1. Chad Loft, you have pleaded guilty to the following charges:

- One charge of armed robbery contrary to s 75A of the *Crimes Act* 1958 which carries a maximum penalty of 25 years imprisonment;

- One charge of aggravated carjacking contrary to s 79A of the *Crimes Act* 1958 which carries a maximum penalty of 25 years imprisonment ;

- One charge of obtaining financial advantage by deception contrary to s 82(1) of the *Crimes Act* 1958 which carries a maximum penalty of 10 years imprisonment;

- One charge of attempted armed robbery contrary to s 321M and s 75A of the *Crimes Act* 1958 which carries a maximum penalty of 20 years imprisonment;

- One charge of theft contrary to s 74 of the *Crimes Act* 1958 which carries a maximum penalty of 10 years imprisonment; and

- One charge of resisting an emergency worker contrary to s 31(1)(b) of the *Crimes Act* 1958 which carries a maximum penalty of 5 years imprisonment.

2. You have also pleaded guilty to five related summary charges:

- Charge 2 – driving while suspended contrary to s 31 of the *Road Safety Act* 1986*,* which carries a maximum penalty of two years imprisonment;

- Charges 3, 8 and 10 – committing an indictable offence whilst on bail contrary to s 30B of the *Bail Act* 1977 which carries a maximum penalty of three months' imprisonment in each case; and

- Charge 20 - trespass contrary to s 9(1)(e) of the *Summary Offences Act* 1966 which carries a maximum penalty of six months imprisonment.

3. You have also admitted your prior criminal record.

1 Circumstances of the offending

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4. A prosecution opening was tendered on the plea and may be summarised as follows:

5. At approximately 3:23am on Saturday 29 September 2018, you drove a white Toyota Prado, into the forecourt of a Caltex Service Station at 1 Horsburgh Drive, Altona North. You parked and got out, leaving the engine running and the driver's door open.

6. You walked into the service station and up to the counter. You asked the attendant Tyler Lewis (aged 25) for a packet of Winfield Blue cigarettes. Mr Lewis obtained two different types of Winfield Blue and when he turned back around to face you, you snatched both packets of cigarettes from him and placed them in the pocket of your jacket. At the time you were holding a large knife with your right hand inside your jacket. You then said to Mr Lewis “I need your money too mate”. Mr Lewis saw you holding a large hunting knife with your right hand against your chest. You said “I need money, otherwise my family is dead. They are going to die”. Mr Lewis told you several times that he didn't have any money to give you.

7. You then walked out of the service station, got in your car and quickly drove off. It is these facts that relate to Charge 1, armed robbery and Summary Charge 3, commit an indictable offence whilst on bail.

8. Later checks on the VicRoads database revealed that you were the holder of a Victorian driver's licence that had been suspended on 21 September 2018 for a period of three months due to demerit points. It is these facts that relate to Summary Charge 2, driving while suspended.

9. At approximately 11:13am on Saturday 29 September 2018, victim Paul Evans (aged 34) had parked his Holden Subaru vehicle outside 32 Raleigh Street, Essendon. As he did so you ran towards Mr Evans' vehicle, crossing the median strip. You approached Mr Evans on the road as he got out. Mr Evans' partner, Erin Anderson who was four months pregnant, their two-year-old daughter and pet dog, were still inside the vehicle.

10. You stood within a few feet of Mr Evans holding a large hunting knife in your right hand that was partially covered by the long black sleeves of your shirt. You said to Mr Evans three or four times “Give me your keys, give me your keys”. Mr Evans backed away as you were making these demands.

11. As this occurred Ms Anderson was leaning into the rear passenger side door to unstrap their daughter from her car seat. She looked up and saw the knife through the opposite window. Ms Anderson heard you say to Mr Evans “I want the fucking car, give me the fucking car”.

12. After seeing the knife Mr Evans handed you the keys to his vehicle. Ms Anderson was able to safely remove their daughter from the vehicle as Mr Evans took the pet dog from the boot. You got in the driver's seat of the vehicle and sped off towards Pascoe Vale Road. Mr Evans’ Commonwealth Bank credit card was in the vehicle when you drove off. It is these facts that relate to Charge 2, aggravated carjacking and Summary Charge 8, commit indictable offence whilst on bail.

13. At 11:47am, you were captured on CCTV driving Mr Evans' Subaru into the Sunshine Marketplace car park at 80 Harvester Road, Sunshine. After you parked and got out you attended the Woolworths store and used Mr Evans' Commonwealth Bank credit card to purchase packets of Winfield Original Blue cigarettes from Woolworths, worth $89.85.

14. You walked back to the Subaru and drove to the Caltex service station at 970 Ballarat Road, Burnside where you used Mr Evans' Commonwealth credit card to purchase food, drink and cigarettes to the value of $65.82.

15. You then attended the KFC restaurant at 978 Ballarat Road, Burnside where you used Mr Evans' Commonwealth credit card to purchase food worth $41.95. It is the three separate purchases that relate to rolled up Charge 3, obtain financial advantage by deception.

16. After you had purchased your meal at KFC you sat down at a table in the outdoor dining area. At approximately 12:49pm, Jian Liu (aged 62) purchased a KFC meal and walked to his vehicle in the car park. You are observed on CCTV watching Mr Liu walk to his vehicle. Mr Liu got into the driver's seat and prepared to reverse out of the

car park. He had the keys in the ignition and had started his vehicle and fastened his seatbelt. Mr Liu waited for the vehicle next to him to reverse from the car park.

17. You took your meal and walked towards Mr Liu's vehicle. You opened the front passenger door and sat down next to Mr Liu. Mr Liu recognised you from seeing you inside KFC. He asked you why you got into his vehicle.

18. You pulled out a large knife and held it close to your stomach with the blade towards Mr Liu. Mr Liu described the knife as approximately 10 inches long with a black cover on the blade.

19. You said to Mr Liu “Give me your wallet”. Mr Liu asked you why he should give you his wallet. You raised your voice and said again “Give me your wallet”. Mr Liu undid his seatbelt, opened the driver's door and jumped out of the vehicle. It is these facts that relate to Charge 4, attempted armed robbery and Summary Charge 10, commit indictable offence whilst on bail.

20. Mr Liu had left the key in the ignition with the engine running. You tried to stop Mr Liu from exiting the vehicle by grabbing him with your right hand, but you were unable to stop his escape. Mr Liu ran back towards KFC. Mr Liu observed you pulling the driver’s door closed. You reversed out of the car park in Mr Liu’s car and drove off in a westerly direction. It is these facts that relate to Charge 5, theft.

21. At approximately 11:30pm on 29 September 2018, witnesses Cameron Patton and Crystal Kirkbride were having a cigarette in their rear yard when they heard footsteps in their neighbour’s yard at 4 Lyall Drive, Werribee. Your aunt, Karen Loft resides at 4 Lyall Drive, Werribee with her husband. Mr Patton knew that their neighbours were away for the long weekend and that no one was meant to be at the house.

22. Mr Patton and Ms Kirkbride left their property to go to the grocery store and arrived home at approximately 12:00am. They both noticed that the side gate of number 4 Lyall Drive had been held open with a bin and a pitchfork was sitting on the bin. They heard more noises coming from the rear yard of 4 Lyall Drive. Mr Patton thought that someone was trying to jemmy something open and was using a lot of force. He observed the rear sensor lights had been activated.

23. Ms Kirkbride called triple zero and waited with Mr Patton out the front of their house until police arrived. Mr Patton noticed a black coloured Subaru parked on their neighbour's nature strip. At approximately 12:15am on Sunday 30 September 2018 First Constable Lachlan McGarvie and Constable Breanna Krause arrived at 4 Lyall Drive and walked through the side gate into the backyard.

24. First Constable McGarvie observed the rear security screen door had been badly damaged and heard noises coming from inside the house. He yelled out 'Police' and Constable Krause saw you standing inside the hallway through the broken fly screen of the back door. You started to scream. You were holding a very large knife in your right hand. You thrust the knife towards Constable Krause and First Constable McGarvie in a stabbing motion which caused them to fear for their lives.

25. First Constable McGarvie told you to drop the knife and you refused. Constable Krause sprayed you with OC spray to little effect. You said, "I want you to shoot me, right here", while pointing your finger to your forehead. Constable Krause and First Constable McGarvie retreated to the front of the property and radioed for assistance.

26. You walked through the side gate and were standing in the driveway still holding the knife. You said "The only way I'm going home is if I'm dead". You walked up and down the driveway several times, acting erratically and talking to yourself. You stated several times that you wanted police to shoot you and kill you.

27. First Constable McGarvie asked you how you got to the address. You stated "I stole that car over there and drove it here", referring to Mr Evans' stolen Subaru.

28. At approximately 12:41am, Critical Incident Response Team (CIRT) members arrived at the scene. They were informed that you were last seen jumping the fence into the rear yard of 2 Lyall Drive. Senior Constable Gareth Dorsey then moved into a cordon position in the rear yard of 7 Anne Street and observed you behind the fence in the rear yard of 2 Lyall Drive. Senior Constable Dorsey called "Police. Don't move". You started screaming, saying; "Fuck off, just fucking shoot me". You produced a large silver bladed hunting style knife, pointing it at Senior Constable Dorsey and then holding the knife up to your own head. You gripped the top of the fence and motioned as if you were going to throw the knife at Senior Constable Dorsey. You stated, "Just fucking shoot me you cunt, stop screaming at me". You were again told to drop the

knife and walk out to the front of the property with nothing in your hands. You replied “Fuck you! I'm not going anywhere you cunt, you'll have to fucking shoot me”.

29. CIRT member, Leading Senior Constable Jeffrey Nickel moved to the front yard of 7 Anne Street, which backs onto the rear of 2 Lyall Drive. He stood on a chair to have a clear view into the rear yard and observed you holding a large hunting knife to your head. Leading Senior Constable Nickel said “Chad drop the knife mate, it's ok just come out the front and talk to us”. You lowered the knife from your head and pointed it at Leading Senior Constable Nickel, moving towards him in an aggressive manner while yelling “Just fucking shoot me”.

30. Leading Senior Constable Nickel deployed his Taser which caused you to instantly drop the knife and fall to the ground on your back. You were instructed four times to roll onto your stomach and place your hands behind your back. You refused to follow Leading Senior Constable Nickel's instruction and were Tasered a second time.

31. You were handcuffed, arrested and cautioned. It is these facts that relate to Charge 6, resisting an emergency worker and Summary Charge 20, trespass.

32. You were transported to the Werribee Hospital for treatment. You were deemed to not require medical treatment and released into police custody. You were transported to the Werribee Police Station for interview. Forensic Medical Officer Rowse attended and deemed you not fit for interview.

33. Mr Evans' and Mr Liu's vehicles were both written off due to damage caused while you were in possession of those vehicles.

34. At the time of the offending on 29 September 2018 you were on bail to appear at Bacchus Marsh Magistrates Court on 25 January 2019 having been arrested and charged on 25 May 2018 with reckless conduct endangering persons, breach of family violence intervention order, dealing with suspected proceeds of crime and dangerous driving.

Nature and gravity of the offending

35. The charges on the indictment together with the related summary charges represent a litany of offending over approximately a 21 hour period commencing in the morning of 29 September 2018.

36. The armed robbery attempted armed robbery and carjacking offences are particularly serious. The seriousness of those offences is of course recognised by the maximum penalties, however the circumstances that give rise to the offences in this instance are disturbing.

37. The feature of aggravation of the carjacking offence is based on the use of a knife. You produced a knife to the victim Paul Evans demanding his car keys. Mr Evans' partner Erin Anderson witnessed you with the knife and heard your demands as she was attending to their two-year-old daughter in the car. You clearly had no regard to the fact that this would have been an extremely frightening experience for Mr Evans and Ms Anderson. You also gave no regard to the fact that a young child was present. After taking the car and leaving the scene, you then used Mr Evans credit card that you found in his car on three occasions later in that day.

38. The incident involving victim Jian Liu would have also been a frightening experience for him. You entered his car as he was simply leaving the KFC restaurant and produced a knife demanding Mr Liu's wallet. Fortunately, Mr Liu was able to escape before providing his wallet, however you then got into the driver's seat and stole his car resulting in the charges of attempted armed robbery and theft.

39. In relation to the cars that you stole, once they were recovered, damage had been caused to both cars which has been largely unexplained. However, the damage that was caused while the cars were in your possession resulted in both being written off by insurers causing financial cost and inconvenience to the victims.

40. The initial armed robbery represented by Charge 1 also involved the use of a knife. The offence occurred in the early hours of the morning when attendants at service stations are rightly viewed as vulnerable soft targets. The victim in this instance was simply going about his business when you confronted him, again resorting to the use

of a knife in order to take the cigarettes from the victim's hand. You also demanded money while holding the knife.

41. Charge 6 on the indictment names five police officers who attended the scene where you were ultimately arrested. Two of those officers have made victim impact statements however it is self-evident from the narrative of the incident, that your conduct would have been a confronting experience for the officers involved.

42. In my view charges that involved direct confrontation with victims Charges 1, 2, 4 and 5, are very serious offences which was conceded by Ms Willard who appeared on your behalf. In each case you were drug effected and behaving in an erratic and disturbing manner placing members of the community in fear.

43. Further, the circumstances in relation to Charge 2 in my view represent a very serious example of the offence of aggravated carjacking.

Victim impact statements

44. Victim impact statements were prepared by Erin Anderson, Paul Evans, Breanna Krause and Lachlan McGarvie. All four statements were read by the prosecutor at the plea and I have taken the content of those victim impact statements into account.

45. Ms Anderson speaks of the nightmares she suffered for several weeks following the carjacking. She was concerned about the impact of the anxiety upon her unborn child and the impacts of the events on her young daughter. She has flashbacks of the crime and is now fearful and does not feel safe in public. She speaks about the inconvenience and cost in relation to the insurance claim on the car and costs associated with changing the locks in the house.

46. Mr Evans continues to have a sense of guilt over the fact that he handed the keys to you before ensuring that his partner and two-year-old daughter were safely out of the car. He has an image of the knife in his memory and continues to feel fear when strangers are near his car.

47. Ms Krause was one of the police officers involved in the confrontation with you at the time of your arrest. She notes that even though she was doing her job as a police officer, she acknowledges that she too was a victim and was placed in a confronting and dangerous situation with the real possibility of the use of lethal force on another person.

48. Mr McGarvie was also one of the police officers at the scene when you were arrested. He states that the impact of the event caused him serious anxiety for a number of weeks following the confrontation. He has flashbacks to the event and he too believes he was placed in a position where he may have had to use lethal force. He states that he has only been in the job for a short time and that that night was the most confronting and frightening job he had attended.

Personal circumstances

49. You are now 41 years of age. You were raised in Melton and have supportive parents who were in court during the plea hearing. You have a younger sister with whom you maintain contact. You are the only member of your family who has had dealings with the criminal justice system.

50. You left school after year 11 and commenced an apprenticeship in engine reconditioning. You continued that work for a few years however you were ultimately retrenched as a result of failing to attend trade school together with the fact that you had a growing heroin addiction. You have since then worked intermittently with your father doing various work in the businesses that he is involved in including welding and operating cranes.

51. You were involved in a relationship with your ex-partner for some 18 years however that relationship finally broke down in the months leading up to this offending.

52. You have had a long term and significant heroin addiction for the past 20 years and in the months leading up to this offence, you were also using ice heavily on a regular basis. You became paranoid and it is clear that you were acting erratically on the day that you committed these offences whilst under the influence of ice.

53. In January 2018 your parents purchased a farm in Cobram. As I understand the situation, the plan was to take you there to remove you from the world in which you were involved in and to assist you in becoming drug free. As part of that intention you were able to be placed on the buprenorphine program in February 2018. You had some success in remaining drug free for a period of time however you met a new partner who lived in Melton. As such, you spent time in Melton and because you were absent from the program for a period of time, you were suspended from the program in September 2018. You had a genuine determination not to relapse into heroin use however while that may have been achieved for a period of time, you began to use methamphetamine as an alternative. Further, as a result of your methamphetamine use, in the week prior to the offending, you were in a paranoid state with suicidal thoughts.

54. In the period that you were drug free you had planned to move to Queensland and work in the mines. You had saved some money and were going to purchase a campervan in order to make that move. However, your ex-partner took your car together with the money that you had saved and while the details were unclear, it seems that in the aftermath of that incident you were charged with offences including breaching an intervention order and a driving charge.

55. A report was prepared by Dr Lester Walton, consultant psychiatrist, and tendered on the plea. Dr Walton summarises the instructions you provided to him in relation to the auditory hallucinations that you had suffered leading up to the offences, that you were unable to sleep and that you were convinced that your own family was to be killed. This was the state of your mind immediately prior to the offending. You became convinced that your motor vehicle was bugged and thus you abandoned it ultimately resorting to the carjacking incident in order to acquire another vehicle.

56. Dr Walton reports that you recalled insisting the police shoot you. In that context he notes that with hindsight you accept that there was a component of your behaviour that was seeking help for your mental state at the time.

57. Dr Walton assessed your mental state and concluded that you are not suffering from schizophrenia but more likely had recurring bouts of drug induced psychosis. He found no evidence of acquired brain injury. Ultimately, his conclusions were simply that the drug you were using was the cause of any psychosis you may have been

suffering on the day of this offending. Sadly, this is an all too common finding in relation to persons that are under the influence of ice.

58. That said, Dr Walton reports that you have suffered anxiety for a long period of time including the period leading up to offending behaviour and concludes that you remain in the grips of a significant depression. As such Dr Walton is of the view that as a result of that ongoing depression, custody will be more onerous for you. I accept his opinion and I take it into account.

59. Since being in custody following your arrest you have detoxified and are currently drug free.

Sentencing considerations

60. You pleaded guilty to these charges at the first committal mention and as such your pleas were entered at the earliest possible opportunity. Your pleas of guilty have therefore saved the time and expense of a trial and most importantly, have avoided the need for witnesses to give evidence and relive the events. Your pleas of guilty demonstrate acceptance of responsibility and as such, you have by your pleas facilitated the course of justice.

61. It was submitted on your behalf that you have also demonstrated genuine contrition and remorse in relation to your offending. Dr Walton reports that you are straightforward in your admissions to the facts and that you accept responsibility for your conduct. You stated to him that 'I feel terrible. I'm glad I didn't hurt anybody'. I accept that you have gained some insight into your offending on this particular night and have accepted responsibility. However, I note that while you did not physically hurt anybody, it is clear the psychological impact of your crimes has significantly affected the victims and you need to appreciate the long term affects your conduct has had.

62. Ms Willard conceded that general deterrence, denunciation and just punishment must take prominence in the sentencing consideration. Mr Roper who appeared on behalf the Director of Public Prosecutions submitted that general deterrence, specific

deterrence and just punishment are central sentencing considerations in the circumstances, which I accept.

63. As to specific deterrence, I take into account that you have a significant criminal history commencing in 1997 and involving relevant offences including serious injury offences, dishonesty offences, driving offences and assaulting police which have on occasion resulted in significant periods of custody. You have also struggled through that period with a drug addiction, predominately heroin, although there are amphetamine related offences also in your history. Following the plea I was provided with some further details in the form of summaries as to some of your relevant prior offending which I have considered.

64. As to your prospects of rehabilitation, in my view they can only be approached with caution. While I accept that moving on from a long-term drug addiction is a very difficult process, it is clear that you have made many attempts in the past and although well intended, you have because of life events relapsed into drug use which has resulted in further offending behaviour. While this pattern has occurred for many years you have still been unable to break the cycle. As is made clear by Dr Walton, if you had not been using the level of ice that you were on this particular day and in the days leading up to this offending, you may not have acted in the way that you did. Nonetheless you have demonstrated that you can have periods of abstinence and with the right supports in place in my view you still have reasonable prospects of rehabilitation.

65. Pursuant to s 10AD of the *Sentencing Act* 1991, Charge 2, aggravated carjacking, is an offence which requires the imposition of a custodial sentence and a non-parole period of not less than three years unless the court finds under s 10A that a special reason exists. In this instance it was conceded that no special reason exists and as such, s 10AD will be applied in relation to Charge 2.

Sentence

66. Mr Loft please stand.

67. Chad Loft, on Charge 1, armed robbery, you are convicted and sentenced to three years imprisonment.

68. On Charge 2, aggravated carjacking you are convicted and sentenced to five years imprisonment. This will be the base sentence.

69. On Charge 3, obtain financial advantage by deception, you are convicted and sentenced to six months imprisonment.

70. On Charge 4, attempted armed robbery, you are convicted and sentenced to two years imprisonment.

71. On Charge 5, theft, you are convicted and sentenced to 12 months imprisonment.

72. On Charge 6, resist emergency worker, you are convicted and sentenced to 12 months imprisonment.

73. In relation to Summary Charge 2, driving while suspended, you are convicted and sentenced to two months imprisonment.

74. In relation to Summary Charges 3, 8 and 10, commit an indictable offence whilst on bail, you are convicted and sentenced to one month imprisonment on each charge.

75. In relation to Summary Charge 20, trespass, you are convicted and sentenced to one month imprisonment.

76. I direct that 12 months of the sentence on Charges 1 and 4 and three months of the sentence on Charge 6 be cumulative on each other and on Charge 2. That makes for a total effective sentence of seven years and three months imprisonment.

77. The sentences on the remaining charges on the indictment and the remaining summary charges are to be served concurrently on the other sentences I have imposed. I direct that you serve four years and six months imprisonment before becoming eligible for parole.

78. In relation to the Charge 5, theft of the motor vehicle, pursuant to s 89(4) of the *Sentencing Act* 1991 any driver's licence you hold will be cancelled and you will be disqualified from obtaining a licence for a period of two years from today.

79. Pursuant to s 18 of the *Sentencing Act* 1991, I declare that 288 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today.

80. Pursuant to s 6AAA of the *Sentencing Act* 1991, if not for your plea of guilty I would have sentenced you to a period of eight years and 9 months imprisonment with a non-parole period of 6 years.